

REMARKS

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

Summary of Office Action

In the August 29, 2006 Office Action, claim 1 was rejected under 35 U.S.C. §102(b) over U.S. Patent No. 6, 210,385 to Mizutani (the '385 Mizutani patent).

Claims 2-5 were rejected under 35 U.S.C. §103(a) as obvious over the '385 Mizutani patent in view of U.S. Patent No. 4,886,513 to Mason Jr. *et al.* (the Mason'513 patent).

Claims 6 and 7 were rejected under 35 U.S.C. §103(a) as obvious over the '385 Mizutani patent in view of U.S. Patent Application No. 2002/0013563 to Lassen (the Lassen'563 application).

Claims 8-12 were rejected under 35 U.S.C. §103(a) as obvious over the '385 Mizutani patent in view of U.S. Patent Application No. 2002/0156450 to Drevik (the Drevik'450 application).

Claims 13 and 14 were rejected under 35 U.S.C. §103(a) as obvious over the '385 Mizutani patent in view of the Drevik'450 application and further in view of the Lassen'563 application.

Summary of Response to Office Action

By this Amendment, Claims 1, 2, 4, 8, and 11 are amended. The claims currently pending in this application are Claims 1-14. Claims 1 and 8 are the only independent claims.

The Claims Define Allowable Subject Matter

With regard to the objection to claims 8-14, it is respectfully submitted that by this Amendment, all informalities have been corrected. Withdrawal of the objection is respectfully requested.

Claim 1

In the Office Action, beginning at page 4, claim 1 was rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 6,210,385 to Mizutani (the '385 Mizutani patent). This rejection is respectfully traversed for the following reasons.

Under 35 U.S.C. § 102(b), "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

It is respectfully submitted that the '385 Mizutani patent fails to disclose at least the feature of slits in the absorbent that extend substantially co-extensively with and adjacent to the resilient body such that a deformed portion is created that includes both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion as viewed in the longitudinal direction, and the resilient body is arranged such that the resilient body imparts the contracting force to the absorbent mainly along the longitudinal direction of the product, as recited in claim 1.

In particular, the '385 Mizutani patent discloses elastic members 11 that cannot be characterized as including a deformed portion that includes both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion as viewed in the longitudinal direction fails. Furthermore, the panel member 16 of the '385 Mizutani patent is not arranged to impart the contracting force to the absorbent mainly along the longitudinal direction of the product. Accordingly, it is respectfully submitted that both structures of the '385 Mizutani patent that are relied upon in the Office Action to anticipate the claimed resilient body are deficient. Because the '385 Mizutani patent fails to disclose each and every feature of claim 1,

the '385 Mizutani patent fails to anticipate claim 1. Thus, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 102(b) be withdrawn.

Claims 2-5

In the Office Action, beginning at page 4, Claims 2-5 are rejected under 35 U.S.C. § 103(a) over the disclosure of the '385 Mizutani patent in view of U.S. Patent No. 4,886,513 to Mason Jr. *et al.* (the '513 Mason patent). This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

The '513 Mason patent fails to make up for the above-noted deficiencies in the '385 Mizutani patent. Specifically, the '513 Mason patent fails to disclose or teach at least the feature of slits in the absorbent that extend substantially co-extensively with and adjacent to the resilient body such that a deformed portion is created that includes both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion as viewed in the longitudinal direction, and the resilient body is arranged such that the resilient body imparts the contracting force to the absorbent mainly along the longitudinal direction of the product, as recited in claim 1.

Applicant also respectfully maintains the position that the combination of references, as suggested in the Office Action, would result in an inoperative device and/or destroy the intended purpose of the base reference to Mizutani, and is thus not an obvious combination of references. In particular, the '513 Mason patent discloses the use of typical reinforcing members 14, 50, 82, and 158 that allow an absorbent pad to maintain its curved shape, resist bending and twisting, and perform its intended functions. In the Background section of Applicant's specification, a similar type of known curved absorbent pad is described at paragraph [0006], in which a known curved absorbent pad that includes a "crotch gather structure" is disclosed. As described in detail in the specification, the present invention is different from this type of known curved absorbent pad device.

Modification of the '385 Mizutani patent device with the reinforcing members of the well known curved absorbent pad disclosed in the '513 Mason would not have been obvious for

various additional reasons. Modification of the resilient panel member 16 of the '385 Mizutani patent to be resilient mainly along the longitudinal direction (as suggested in the Office Action) would result in a device that is inconsistent with the objectives and stated purpose of the '385 Mizutani patent. For example, the '385 Mizutani patent indicates that the resilient panel member 16 is convexly deformed around the central zone 18 (longitudinal axis) towards the body facing side 4. This disclosure is directly opposed to the suggestion in the Office Action that the resilient panel member 16 can be made to be resilient mainly along the longitudinal axis. Thus, it is respectfully submitted that one of skilled in the art would not have been motivated to modify the '385 Mizutani patent with the teaching of the '513 Mason patent because it would have destroyed the base reference's intended purpose.

The Office bears the initial burden of establishing a *prima facie* case of obviousness. M.P.E.P. § 2142. If the Office fails to set forth a *prima facie* case of obviousness, Applicant is under "no obligation to submit evidence of nonobviousness," such as unexpected results or commercial success. *Id.* In other words, if the Office fails to meet the initial burden of establishing a *prima facie* case of obviousness as to a given claim, then that claim is not obvious without any specific evidence of nonobviousness by Applicant.

In order to establish a *prima facie* case of obviousness, the Office must satisfy three requirements. M.P.E.P. § 2142. First, "the prior art reference, or references when combined, must teach or suggest *all* the claim limitations." *Id.* (emphasis added). Second, the Office must show that there is "some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." *Id.* Finally, "there must be a reasonable expectation of success." *Id.*

In this case, as set forth in detail above, there is no reasonable expectation of success because the base reference to Mizutani would be destroyed by the suggested combination with the '513 Mason patent teaching. In addition, there is no *prime facie* case of obviousness because at least the feature of slits in the absorbent that extend substantially co-extensively with and adjacent to the resilient body such that a deformed portion is created that includes both the

absorbent and the resilient body, the deformed portion being a substantially V-shaped portion as viewed in the longitudinal direction, and the resilient body is arranged such that the resilient body imparts the contracting force to the absorbent mainly along the longitudinal direction of the product, as recited in the claims, is absent from both of the cited references, either alone or in combination. In addition, there would have been no motivation to combine the references as suggested because it would have been unreasonable to shape the Mizutani device in the manner disclosed by the '513 Mason patent without destroying the intended purpose of the Mizutani device.

For at least the above reasons, it is respectfully submitted that the combination of the '385 Mizutani patent with the '513 Mason patent is not appropriate, and that the rejection of claims 2-5 under 35 U.S.C. §103 is in error. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 6 and 7

In the Office Action, claims 6 and 7 are rejected under 35 U.S.C. § 103(a) over the disclosure of the '385 Mizutani patent in view of U.S. Patent Application No. 2002/0013563 to Lassen *et al.* (the '563 Lassen application). This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

The '563 Lassen application fails to make up for the above-noted deficiencies of the '385 Mizutani patent. In particular, the '563 Lassen application fails to disclose or teach at least the feature of slits in the absorbent that extend substantially co-extensively with and adjacent to the resilient body such that a deformed portion is created that includes both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion as viewed in the longitudinal direction, and the resilient body is arranged such that the resilient body imparts the contracting force to the absorbent mainly along the longitudinal direction of the product, as recited in claim 1 (and therefore also a feature of dependent claims 6 and 7). Because neither the '385 Mizutani patent nor the '563 Lassen application, either alone or in combination, teach the above-referenced feature, as well as other features, of Applicant's claim 6 and 7, it is

respectfully submitted that there is no *prime facie* case for obviousness. Withdrawal of the rejection of claims 6 and 7 under 35 U.S.C. § 103(a) is respectfully requested.

Claims 8-12

Claims 8-12 were rejected under 35 U.S.C. §103(a) as obvious over the '385 Mizutani patent in view of U.S. Patent Application No. 2002/0156450 to Drevik (the Drevik'450 application). This rejection is respectfully traversed for at least the following reasons.

The Office Action justifies the combination of references by indicating that "Applicant's specification does not disclose that an offset serves any stated purpose or solves any particular problem." This assertion is not correct. For example, at least paragraphs [0005] and [0008] of Applicant's specification clearly discloses a stated purpose when it indicates that the conventional art "cannot sufficiently follow or come into contact with a profile of a lower half of a user's body" and that the invention provides "an absorptive product...which can form and hold a proper stereoscopic shape so as to be properly fitted on a complicated three-dimensional shape of the body of a user for preventing leaking of an evacuated body fluid or the like to the outside," respectively. With this background, it is respectfully submitted that the motivational statement in the Office Action is deficient, and that there would have been no reason to somehow combine the '385 Mizutani patent with the Drevik'450 application, as suggested. Moreover, it is believed that the only reason that the Drevik'450 application is used is in an attempt to find a combination of structures that allegedly read upon Applicant's claims. This is the exact definition of the use of *impermissible* hindsight.

In addition, it is respectfully submitted that neither the '385 Mizutani patent nor the Drevik'450 application, neither alone nor in combination, disclose each and every feature of Applicant's claims. Specifically, the Drevik'450 application fails to disclose or teach slits in the absorbent that extend substantially co-extensively with and adjacent to the resilient body such that a deformed portion is created that includes both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion as viewed in the longitudinal direction, as recited in claim 8. By contrast, the Drevik'450 application discloses an absorbent product

that includes an elastic means 16 located between two legs 14 and 15 of a stiffening element. Contrary to the indication in the Office Action, it is respectfully submitted that there are no slits disclosed or taught in the Drevik'450 application. And again, the ad-hoc combination of references used to arrive at Applicant's claim would have destroyed the intended purpose and inherent functionality of the base reference – the '385 Mizutani patent. Moreover, moving the panel member 16 of the '385 Mizutani patent would result in an unbalanced product that would not conform to a user's body as the '385 Mizutani patent clearly intends. Alternatively, replacing the panel member 16 of the '385 Mizutani patent with, or simply adding the elastic means 16 of the Drevik'450 application in the '385 Mizutani patent's absorbent article would also result in a product that is inadequate for its intended purpose.

Because both the '385 Mizutani patent and the Drevik'450 application, either alone or in combination, fail to disclose all the features of Applicant's claim 8, and because there would have been no motivation to combine the references as suggested, it is respectfully submitted that the rejection is in error.

Claims 9-12 are dependent from claim 8 and therefore include all the features of claim 8 therein. Accordingly, it is respectfully submitted that claims 9-12 are also allowable over the combination of the '385 Mizutani patent and the Drevik'450 application for at least the same reasons that claim 8 is allowable, and for the separate features that these claims recite.

Accordingly, for at least the above reasons, withdrawal of the rejection of claims 8-12 under 35 U.S.C. §103 is respectfully requested.

Claims 13 and 14

Claims 13 and 14 were rejected under 35 U.S.C. §103(a) as obvious over the '385 Mizutani patent in view of the Drevik'450 application and further in view of the Lassen'563 application. This rejection is respectfully traversed for at least the following reasons.

It is respectfully submitted that the Lassen'563 application fails to make up for the deficiencies noted above with respect to both the '385 Mizutani patent and the Drevik'450 application. In particular, the Lassen'563 application fails to disclose or teach at least the feature

of slits in the absorbent that extend substantially co-extensively with and adjacent to the resilient body such that a deformed portion is created that includes both the absorbent and the resilient body, the deformed portion being a substantially V-shaped portion as viewed in the longitudinal direction, as recited in claim 8 (and therefore also a feature of dependent claims 13 and 14). Because neither the '385 Mizutani patent, the Drevik'450 application, nor the '563 Lassen application, either alone or in combination, teach the above-referenced feature, as well as other features, of Applicant's claim 13 and 14, and because there would have been no motivation to make the suggested combination of references, it is respectfully submitted that there is no *prime facie* case for obviousness. Withdrawal of the rejection of claims 13 and 14 under 35 U.S.C. § 103(a) is respectfully requested.

Conclusion

Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of this patent application is therefore respectfully solicited.


If the Patent Examiner believes that a telephone conference with the undersigned would expedite passage of this patent application to issue, she is invited to call on the number below.

Constructive Petition

[X] **Except** for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including filing fees, fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, and any required extension of time fees, or credit any overpayment to Applicant's representative's Deposit Account cited in the application transmittal originally filed with this application. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully submitted,

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